IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

Crl.L.P..No. 439 of 2007()

CC.215/2002 of J.M.F.C.,VARKALA
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PETITIONER/COMPLAINANT:

KAMALUDEEN, S/O.EBRAHIM,
DARA SAIFNA, KAPPIL, EDAVA VOLLAGE,
THIRUVANANTHAPURAM.

BY ADV. SRI.S.GOPAKUMARAN NAIR

RESPONDENTS: A1 AND A2:
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1. PRABHAKARAN, MANAGER, INDIAN OVERSEAS BANK, EDAVA BRANCH, (RESIDING AT HOUSE NO.10/205) AMBALAMUKKU, N.C.C. ROAD, THIRUVANANTHAPURAM.

2. BALAKRISHNAN, ASSISTANT MANAGER INDIAN OVERSEAS BANK, EDAVA BRANCH.

3. STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R3-BY P.P.SRI.PUZHAKKARA MUHAMMED

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 09/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.L.P.NO.439 OF 2007

Dated this the 9th day of July, 2007.

O R D E R

This is a petition for special leave to appeal against the judgment in C.C.No.215/2002 on the file of the Judicial Magistrate of First Class, Varkala. Petitioner is the complainant in the above calendar case. As per the complaint filed before the court, it is stated that the petitioner/complainant had entrusted the key of his house to the 1st accused on 3.5.1997 at about 4.30 p.m on a lease agreement. A list of articles left for the use of A1 was also attached in the agreement. It was stated in the lease agreement that the 1st accused has to keep the building without any damages. It was also stipulated that the 1st accused has to enjoy the ground floor of the building along with his family members. But, in violation of the said stipulation, the 1st accused did not bring his family members to the rented building instead, he allowed the 2nd accused to stay with him. According to the petitioner/complainant after renting out the ground floor of the building, he left to Singapore. On 13.6.1997 the petitioner/complainant received a telephone message that the first floor of the house has been loot

out. He filed a complaint before the C.I of Police, Varkala on 16.6.1997 and requested to take finger prints found on the spot. As such finger prints found on the emergency light, torch light and the items found in the master bed room were also taken. Thereafter, the petitioner's attempt was to keep in touch with the 1st accused and it is learned that both the 1st and 2nd accused came to the demised premises and took the petitioner's articles. On 21.6.1997 petitioner's wife and daughter came to India and requested the Sub Inspector of Police, Varkala to take finger prints of accused 1 and 2. Presence of 3rd party in the rented building was also noticed by the family members of the complainant/petitioner. The S.I of Police failed to investigate the case or to make interrogation instead he advised the complainant to file a complaint before the court below by an advocate. Even the S.I of Police summoned the petitioner's wife and daughter to the police station with the pretext that finger prints of accused 1 and 2 would be taken. But te police threatened the petitioner's wife and on that evening she sustained a chest pain and breathed her last on the way to the hospital. Because of looting of the first floor of the building, the petitioner had sustained a loss of Rs.10,000/= to repair the same and also lost all

the articles mentioned in the complaint. As accused 1 and 2 were not questioned or interrogated by the police, a complaint has been given before the court alleging that accused 1 and 2 have committed the offences punishable under Sections 380, 457, 461, 462 and 427 read with Section 34 of I.P.C.

2. To prove the case against the respondents Pws 1 to 6 were examined and Exts.P1 to P11 were produced. After closing the evidence adduced on behalf of the petitioner/complainant, respondents 1 and 2 were questioned under Section 313 of the Code of Criminal Procedure. Denying the allegations levelled against respondents 1 and 2, they have stated that they were not involved in any of the offence as alleged in the complaint. They have also examined Dws 1 to 4 and relied on Exts. D1 to D7. After considering the entire evidence, the trial court found that even accepting the evidence of Pws 1 to 4 with regard to the presence of the 1st accused, the petitioner/complainant had failed to prove the offence of theft as committed by the accused. The trial court also found that the complainant had no case that the accused were found transferring any of the stolen articles to any other person. The only evidence adduced by the complainant would show that accused 1 and 2 were

found in the house along with a group of people on 12.6.1997 and there was no evidence to prove that the accused had involved in theft of the articles from the first floor of the house. The trial court also found that the evidence of PW1, the complainant, itself shows that he had not entrusted any of the articles either with A1 or A2 whereas his specific case was that he had handed over the articles to his relatives for looking after the same and for enjoying the same. The complainant has further stated before the court that his sister's son is residing very near to the building in question and he was the person authorised to keep the property of the complainant. The trial court also found that none of the relatives was examined before the court to prove the complaint filed against the respondents. The trial court also found in the evidence of Pws 2 to 4 that the petitioner/complainant have got a doubt regarding involvement of the accused in the commission of theft of the articles kept in his house. But, the trial court found that whatever may be the doubt without any evidence, no offence can be drawn against the respondents. The trial court also found that there was no case before that court regarding exact date of the alleged theft which has been committed. It is suspicious to see that the complainant had not persuaded to pursue Crime No.192/1997 registered by the

police which was registered on the statement given by the complainant. The trial court also found that as per Ext.P9 scene mahazar prepared in Crime No.192/1997 it is clear that the outer door of the kitchen has been broken and the real culprits have entered through it. The trial court in this context also found that evidence of DW3 a head constable, who recorded the statement of PW1 in the above crime, was given by PW1 himself. If so, the trial court found that the petitioner has to pursue the criminal case registered by the police. The trial court also found that the outer door of the kitchen has been broken and somebody entered into the house through it. Since the police has registered the above crime and the said crime was registered against the real culprits, according to the trial court, it is not proper for the petitioner to file any complaint against the respondents herein and even in examining any of the witnesses, the complainant failed to prove the case against the respondents. It is also to be noted that even in the complaint filed before the court and in the evidence adduced by the petitioner it is not alleged that the articles alleged to have been stolen have been entrusted in any way with the respondents.

In the above circumstances, this Court is of the view that the

judgment of the trial court is on evidence. It requires no interference by this Court. Accordingly, special leave to appeal stands dismissed as merit less.

K. THANKAPPAN, JUDGE.

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